

Message Text

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L/M:HSHAMWELL

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FM SECSTATE WASHDC

TO AMEMBASSY JIDDA

INFO SECDEF

USMTM DHAHRAN

C O N F I D E N T I A L STATE 187552

E.O. 11652: GDS

TAGS: MARR, MILI, SA

SUBJECT: USMTM MEMORANDUM OF UNDERSTANDING

REF: (A) JIDDA 4106, (B) JIDDA 4181 (C) JIDDA 4989

1. WE CONCUR IN THE TEXT OF COMPROMISE AGREEMENT CONTAINED IN REFTEL A, EXCEPT ARTICLE 8.

2. COMMENTS CONCERNING NEGOTIATING APPROACH TO SAUDIS REGARDING LEGAL STATUS OF USMTM PERSONNEL IN SAUDI ARABIA FOLLO:

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A. APPARENTLY SATISFACTORY OPERATION OF 1965 COE AGREEMENT CAUSED ORIGINAL EMPHASIS ON SEEKING LEGAL STATUS SIMILAR TO COE PERSONNEL FOR USMTM PERSONNEL. IF YOU NO LONGER BELIEVE YOU CAN NEGOTIATE A SATISFACTORY ARTICLE 8 ALONG THE LINES OF THE COE AGREEMENT, AN ALTERNATE COURSE IS TO SEEK LEGAL STATUS SIMILAR TO THAT EXTENDED ANALOGOUS US UNITS WORLDWIDE.

B. MISSIONS PERFORMED BY USMTM PERSONNEL PARALLEL THOSE OF MILITARY ASSISTANCE AND ADVISORY PERSONNEL. THERE ARE NUMEROUS CASES IN WHICH AGREEMENTS GRANT MILITARY ASSISTANCE AND ADVISORY PERSONNEL THE SAME PRIVILEGES AND

IMMUNITIES EXTENDED TO ADMINISTRATIVE AND TECHNICAL STAFFS OF DIPLOMATIC MISSIONS. FOR EXAMPLE, IN IRAN, AN AGREEMENT WHICH ACCORDS SUCH PRIVILEGES AND IMMUNITIES AS SPECIFIED IN THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS APPLIES TO US MILITARY AND CIVILIAN PERSONNEL IN IRAN UNDER ARRANGEMENTS SIMILAR TO THOSE APPLICABLE TO USMTM SAUDI ARABIA.

3. AS RECENTLY AS FEBRUARY 13, 1975, SAG, IN PARA 7 OF TECHNICAL COOPERATION AGREEMENT, AGREED THAT USG EMPLOYEES AND DEPENDENTS WOULD BE ENTITLED TO THE PRIVILEGES AND IMMUNITIES ACCORDED TO EMBASSY PERSONNEL OF COMPARABLE RANK AND CATEGORY. (SUCH PRIVILEGES WERE NOT, HOWEVER, EXTENDED TO EMPLOYEES OF FIRMS UNDER CONTRACT TO USG OR SAG.)

4. ACCORDINGLY, AMBASSADOR SHOULD RESUME NEGOTIATIONS WITH FOREIGN MINISTRY PROPOSING ARTICLE 8 WHICH FOLLOWS BELOW IN ATTEMPT TO ACQUIRE SAME STATUS FOR USMTM PERSONNEL AS THAT ACCORDED ADMINISTRATIVE AND TECHNICAL STAFF OF EMBASSY, AS PROVIDED IN VIENNA CONVENTION ON DIPLOMATIC RELATIONS. PROPOSED TEXT OF ARTICLE 8 MAKES NO REFERENCE TO VIENNA CONVENTION SINCE SAUDI ARABIA IS NOT A PARTY TO THE CONVENTION. AMBASSADOR SHOULD ADVISE SAG NEGOTIATORS, HOWEVER, THAT USG REGARDS VIENNA CONVENTION AS DECLARATIVE OF CUSTOMARY INTERNATIONAL LAW IN MOST MATERIAL RESPECTS. (COPY OF CONVENTION BEING POUCHED CONFIDENTIAL

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TO EMBASSY.)

5. PROPOSED ARTICLE 8, QTE: US MILITARY AND US DOD CIVILIAN EMPLOYEES ASSIGNED OR ATTACHED TO OR UNDER THE CONTROL OF THE CHIEF, US MILITARY TRAINING MISSION, AND THEIR DEPENDENTS, SHALL BE ACCORDED THE PRIVILEGES AND IMMUNITIES WHICH ARE ACCORDED UNDER CUSTOMARY INTERNATIONAL LAW TO THE ADMINISTRATIVE AND TECHNICAL STAFF OF

DIPLOMATIC MISSIONS

UNQTE.

6. AS INDICATED IN PARA 2, REFTEL A, CIVILIANS AND DEPENDENTS ARE NOT SUBJECT TO TRIAL BY COURTS-MARTIAL IN PEACETIME. THUS SAUDI NEGOTIATORS MIGHT FIND THE EXTENSION OF IMMUNITIES TO US DOD CIVILIAN PERSONNEL AND DEPENDENTS OBJECTIONABLE. IT MAY BE POSSIBLE TO OVERLOOK SAG RESERVATIONS IN THIS AREA BY EMPHASIZING IN NOTES TO BE EXCHANGED AT THE TIME OF SIGNING THE MOU, U.S. RESPONSIBILITIES WITH REGARD TO THE IMMUNITIES AND PRIVILEGES GRANTED USMTM. PROPOSED IS THE FOLLOWING LANGUAGE: IN CONNECTION WITH THE AGREEMENT...SIGNED THIS DATE, THE EMBASSY IS PLEASED TO INFORM THE GOVERNMENT OF

SAUDI ARABIA THAT THE AUTHORITIES OF THE UNITED STATES CONSIDER ITS EMPLOYEES WHO ENJOY PRIVILEGES AND IMMUNITIES UNDER THE AGREEMENT AS HAVING AN OBLIGATION TO ABIDE BY THE LAWS AND REGULATIONS OF SAUDI ARABIA, NOTWITHSTANDING THEIR PRIVILEGES AND IMMUNITIES, AND WILL REMIND SUCH EMPLOYEES OF THEIR OBLIGATION NOT TO ABUSE THE PRIVILEGES AND IMMUNITIES WHICH HAVE BEEN BESTOWED UPON THEM FOR THE BENEFIT OF THE MISSION."

7. IF THE ALTERED VERSION OF ARTICLE 8 BUTTRESSED BY THE ABOVE NOTE DOES NOT GO FAR ENOUGH TO SATISFY SULTAN'S CONCEPTION OF A COMPROMISE (PARA 1B REF C), YOU ARE AUTHORIZED TO EXCHANGE NOTES AT THE SAME TIME AS THE MOU, ASSURING THE SAG OF SYMPATHETIC CONSIDERATION TO ITS REQUESTS FOR WAIVER OF IMMUNITY IN CASES WHICH IT CONSIDERS TO BE OF PARTICULAR IMPORTANCE. SUGGEST THE FOLLOWING TEXT, WHICH IS SIMILAR TO THAT USED IN IRAN:

QTE: IN CONNECTION WITH THE AGREEMENT BETWEEN THE GOVERN-
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MENT OF THE KINGDOM OF SAUDI ARABIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA PERTAINING TO THE UNITED STATES MILITARY TRAINING MISSION TO THE KINGDOM OF SAUDI ARABIA, SIGNED THIS DATE, THE EMBASSY IS PLEASED TO INFORM THE GOVERNMENT OF SAUDI ARABIA THAT THE AUTHORITIES OF THE UNITED STATES WILL GIVE SYMPATHETIC CONSIDERATION TO A REQUEST FROM THE AUTHORITIES OF THE GOVERNMENT OF SAUDI ARABIA FOR WAIVER OF IMMUNITY IN CASES WHERE THE AUTHORITIES OF THE GOVERNMENT OF SAUDI ARABIA CONSIDER SUCH WAIVER TO BE OF PARTICULAR IMPORTANCE. IT IS UNDERSTOOD THAT CASES OF "PARTICULAR IMPORTANCE" WOULD BE CASES INVOLVING HEINOUS CRIMES AND OTHER CRIMINALLY REPREHENSIBLE ACTS."

8. THERE IS SOME CONCERN HERE THAT OFFERING "SYMPATHETIC

CONSIDERATION" TO WAIVERS OF IMMUNITY COULD (A) CREATE EXPECTATIONS THAT WAIVERS WILL IN FACT BE GRANTED WHERE WE ARE NOT PREPARED TO DO SO AS A GENERAL BUT RATHER STRONGLY HELD PRINCIPLE, (B) CREATE UNDESIRABLE PRECEDENT FOR IMMUNITIES OF OTHER USG PERSONNEL IN SAUDI ARABIA. IF THE SAG ACCEPTS THE "SYMPATHETIC CONSIDERATION" FORMULA, YOU SHOULD MAKE CERTAIN THE SAG UNDERSTANDS THAT THIS APPLIES ONLY TO THE PRESENT AGREEMENT, AND THAT THE USG IS NOT OBLIGATED (I.E., RESERVES THE RIGHT TO REJECT A REQUEST) TO WAIVE IMMUNITY IN ANY GIVEN CASE. KISSINGER

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